

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

Judge Robert W. Schroeder III

|                     |   |                     |
|---------------------|---|---------------------|
| VIRNETX INC., et al | § |                     |
|                     | § |                     |
| V.                  | § | CIVIL NO. 6:12cv855 |
|                     | § |                     |
| APPLE INC.          | § |                     |

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MINUTES FOR DAY SEVEN OF TRIAL  
HELD BEFORE JUDGE ROBERT W. SCHROEDER III  
FEBRUARY 2, 2016

OPEN: 8:48 am

ADJOURN: 5:08 pm

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ATTORNEY FOR PLAINTIFFS: Brad Caldwell, Jason Cassady, Austin Curry, and Johnny Ward

ATTORNEY FOR DEFENDANTS: Greg Arovas, Robert Appleby, Joseph Loy, Jeannie Heffernan, Leslie Schmidt, Akshay Deoras, and Mike Jones

LAW CLERK: Jenna Rea

COURTROOM DEPUTY: Betty Schroeder

COURT REPORTER: Brenda Smith

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8:48 am Outside the presence of the jury, Mr. Caldwell addresses the issue of a corrective instruction; Ms. Heffernan responds; Mr. Caldwell responds; Court responds; Mr. Arovas advises that he will file a written offer of proof on the reexam PTAB; Mr. Caldwell advises that he doesn't objection procedurally but does object to it coming in

9:01 am Jury seated; Court welcomes everyone back

9:01 am Mr. Ward begins cross examination of Chris Bakewell

9:02 am Bench conference

9:08 am Jury excused; Court to take up an evidentiary matter

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| 9:16 am  | Recess   |
| 9:34 am  | Outside the presence of the jury, bench conference                       |
| 9:47 am  | Jury seated; Court apologizes for the delay                              |
| 9:48 am  | Mr. Ward continues cross of Mr. Bakewell                                 |
| 9:50 am  | Objection by Ms. Heffernan; bench conference                             |
| 9:52 am  | Mr. Ward continues with cross  |
| 10:10 am | Mr. Ward passes the witness  |
| 10:11 am | Ms. Heffernan begins re-direct   |
| 10:17 am | Objection by Mr. Ward, leading; Court - rephrase the question            |
| 10:19 am | Plaintiff's Exhibit #395   |
| 10:22 am | Defendant's Exhibit #910.05  |
| 10:25 am | Mr. Ward begins re-cross   |
| 10:29 am | Plaintiff's Exhibit #1086  |
| 10:31 am | Ms. Heffernan questions the witness                                      |
| 10:33 am | Court asks the jury for any questions for the witness                    |
| 10:34 am | Bench conference   |
| 10:35 am | Court asks the witness the question from the jury; Mr. Bakewell responds |
| 10:36 am | Ms. Heffernan questions the witness                                      |
| 10:35 am | Mr. Ward questions the witness   |
| 10:41 am | Witness is excused   |
| 10:41 am | Jury excused   |
| 10:42 am | Bench conference   |
| 10:45 am | Recess   |

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| 11:00 am | Outside the presence of the jury, bench conference  |
| 11:08 am | Jury seated   |
| 11:09 am | Mr. Arovas advises that Apple rests.  |
| 11:09 am | Mr. Curry begins rebuttal questioning of witness Mark Jones (previously sworn)  |
| 11:19 am | Bench conference  |
| 11:23 am | Mr. Curry continues   |
| 11:24 am | Mr. Appleby questions Dr. Jones   |
| 11:27 am | Courtroom sealed  |
| 11:27 am | Mr. Appleby continues   |
| 11:47 am | Courtroom unsealed  |
| 11:47 am | Mr. Curry begins re-direct  |
| 11:55 am | Mr. Appleby begins re-cross   |
| 12:00 pm | Mr. Curry questions the witness   |
| 12:01 pm | Court asks the jury for any questions for the witness   |
| 12:03 pm | Bench conference  |
| 12:04 pm | Court asks the witness questions from the jury  |
| 12:05 pm | Mr. Curry questions the witness   |
| 12:05 pm | Mr. Appleby questions the witness   |
| 12:06 pm | Witness excused   |
| 12:06 pm | Jury excused for lunch  |
| 12:08 pm | Mr. Mizzo and Mr. Summers make formal objections to verdict form; Court gives rulings; Mr. Mizzo and Mr. Summers make formal objections to jury instructions; Court gives rulings |
| 12:28 pm | Mr. Jones advises the Court that he is prepared to submit written JMOL; no objections   |

12:29 pm Mr. Cassady submits VirnetX's Final Admitted Exhibit List; Mr. Mizzo present Apple's Final Admitted Exhibit List

12:30 pm Mr. Cassady submits the numbering of their demonstratives; no objections; not being used as evidence

12:34 pm Mr. Curry moves for judgment as a matter of law for infringement

12:36 pm Mr. Appleby responds

12:39 pm Court DENIES motion

12:40 pm Mr. Summers moves for judgment as a matter of law as to willfulness

12:42 pm Mr. John O'Quinn responds

12:46 pm Mr. Summers also moves for judgment as a matter of law as to the 2013 version of VPN On Demand.

12:46 pm Court DENIES motion

12:46 pm Mr. Summers asks for representation from Apple as to the old version of VPN On Demand that they do not intend to dispute the subjective prong of willfulness

12:47 pm Mr. O'Quinn responds

12:50 pm Recess

1:19 pm Outside the presence of the jury, Mr. Cassady advises they would like to make offer of proof regarding non-infringing alternative evidence in writing; no objections; moves for Rule 50; Ms. Heffernan responds; Court DENIES motion; objects to non-infringing alternative instruction not being included in the charge; OVERRULED

1:25 pm Jury seated

1:26 pm Plaintiff rests; nothing further from the defendant

1:26 pm Court gives instructions to jury

2:16 pm Bench conference

2:17 pm Mr. Caldwell begins closing statement for VirnetX

2:40 pm Mr. Ward continues with closing statement

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| 2:57 pm | Mr. Arovas gives closing statement for Apple  |
| 3:58 pm | Mr. Caldwell concludes his closing statement  |
| 4:18 pm | Court instructs the jury that it is now time to adjourn for deliberations   |
| 4:18 pm | Jury excused  |
| 4:19 pm | Mr. Arovas addresses the Court regarding several statements made during closing; Court advises that once a transcript is ready, to make a written filing                              |
| 4:20 pm | Recess  |
| 4:30 pm | Received Juror Note #1 advising of the foreperson   |
| 4:59 pm | Received Juror Note #2  |
| 5:05 pm | Court advises parties that the jury wishes to leave for the day   |
| 5:06 pm | Jury seated; Court acknowledges foreperson; instructs the jury to not discuss the case with anyone and to not begin deliberations until everyone is present; will adjourn for the day |
| 5:08 pm | Recess  |